

DONOFRIO AFFIDAVIT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAMON MORALES,

Plaintiff,

Civil Case No.: 2:14-cv-04702
(LDW)(AYS)

- against -

5 BROTHERS RESTAURANT, INC., OLD
TOWN, INC., and DENNIS D'ONOFRIO,

Defendants.

**AFFIDAVIT IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Dennis Donofrio, being duly sworn, deposes and says:

1. I am an individual defendant and president of defendant Old Town, Inc. I make this affidavit in support of defendants' motion for partial summary judgment. I have knowledge of the facts stated herein.

2. Old Town, Inc. runs a pizzeria in Port Jefferson Station, New York known as Old Town Pizza. This is the only business of Old Town, Inc.

3. On April 15, 2012 Old Town, Inc. hired plaintiff as a dishwasher at the hourly rate of \$7.25 per hour (1½ times for overtime). At the time of his employment he was provided with a disclosure statement pursuant to New York State Labor Law setting forth this rate of pay and he signed the document before me. A copy of this disclosure is annexed hereto and incorporated herein as Exhibit A. Plaintiff began work on April 17, 2012. Subsequent thereto plaintiff was paid in accordance with Exhibit A until the events detailed in paragraph 6 below.

4. As a regular part of the business of Old Town, Inc. during plaintiff's employment, Old Town Inc. maintained a computer point of sale system which, among other things, recorded

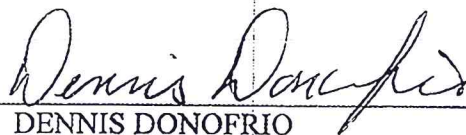
the time worked by employees and computed the amount due for such work. Each day every employee would log in and log out, thus recording his or her work hours. A printed record of the time of arrival and departure, hours worked, and amount of pay due was generated.

5. These records were maintained in the ordinary course of Old Town, Inc.'s business. In particular, records were maintained for plaintiff. A copy of plaintiff's records are annexed hereto and incorporated herein as Exhibit B.


6. On January 1, 2013 plaintiff's rate of pay was raised to \$8.00 per hour (\$12.00 for overtime) and on March 15, 2013 plaintiff was provided with a disclosure similar to the one provided at the time of his employment which he signed before me. A copy of this disclosure is annexed hereto and incorporated herein as Exhibit C. Subsequent to January 1, 2013 and until the termination of his employment plaintiff was paid in accordance with Exhibit C.

7. At no time during his employment did plaintiff complain that he was not receiving his agreed upon hourly rate (plus applicable overtime). Plaintiff's employment was terminated as of the end of July 17, 2014, his last day of work.

WHEREFORE, it is respectfully requested that the motion for partial summary judgment be granted.


DENNIS DONOFRIO

Sworn to before me this
15th day of January, 2016.


Notary Public

LAUREN TONNESEN
Notary Public, State of New York
No. 6277158
Qualified in Suffolk County
Commission Expires 03/04/2017